

**MODEL CONTRACT FOR COMPUTER SOFTWARE,  
SERVICES AND EQUIPMENT**

This Contract is entered into this 3rd day of November, 2008, by and between AS2, Inc. (the "Contractor"), the Vermillion County Assessor and the Board of County Commissioners of Vermillion County, Indiana (hereinafter jointly and severally the "County"), and the Department of Local Government Finance, a party for the limited purposes of approving the employment of the Contractor and exercising statutory oversight pursuant to I.C. 6-1.1-31.5-2.

**RECITALS**

- A. The County has determined it is in the County's best interest to employ the Contractor as an information technology provider pursuant to the provisions of I.C. 6-1.1-31.5-2 for the purpose of providing computer software, services and/or equipment as required by I.C. 6-1.1-31.5-2 and 50 IAC 23;
- B. The County and the Contractor have complied with I.C. 5-22 in obtaining bids, proposals or a special procurement, and the purchase of Contractor's software, services and /or equipment is in compliance with Indiana Law;
- C. The Contractor's software, services and/or equipment is being certified by the Department pursuant to 50 IAC 23-18;
- D. The County is awarding the Contract to the Contractor after compliance with I.C. 5-22, and the Contractor is willing to contract with the County subject to the terms and conditions of this Contract;
- E. This Contract is subject to the provisions of I.C. 6-1.1-31.5 and 50 IAC 23, and Contractor will comply with the provisions of I.C. 6-1.1-31.5 and 50 IAC 23 in connection with this Contract; and
- F. The Department has final approval authority for the employment of Contractor pursuant to this Contract, and, as a signatory to the Contract, has the right to exercise its statutory right of oversight of the performance of the Contractor as contemplated by I.C. 6-1.1-31.5-2.

**AGREEMENT**

In consideration of the promises, mutual covenants and obligations of the parties, the County, the Department and the Contractor agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are adopted by the parties as being true and accurate statements, and are hereby incorporated as binding representations of this Contract.

2. **Products and Services Provided by Contractor.** Contractor agrees to provide to County certain Hardware, Software, and/or Services, including but not limited to consulting, project management, training, configuration or installation (collectively the "**System Package**"), all as more particularly described on the **Work Plan** attached as "**Exhibit A**". From time to time, Contractor and County may agree upon additional Hardware, Software and/or Services to be provided by Contractor (the "**Additional Products and Services**"), which shall be designated on additional **Work Plan(s)** to be attached as Addenda to this Contract and executed by the Parties pursuant to the same formalities as the execution of this Contract. The System Package, Work Plan and Additional Products and Services shall be governed by the terms of this Contract, and to the extent the terms of this Contract and the Work Plan contradict, the terms and provisions of this Contract shall control.

3. **Contractor's Product Compliance with Indiana Law.** If the Contractor's duties pursuant to this Contract is to provide a property tax management system, Contractor agrees as follows in compliance with 50 IAC 23-19-1(a)(3) and (5) and 50 IAC 23-19-2(b)(2):

A. Contractor guarantees and warrants that the products covered by this Contract meet the provisions of 50 IAC 23-19, and if any party subsequently discovers a failure by Contractor's products to meet the provisions of 50 IAC 23-19, the failure will be corrected at Contractor's expense.

B. Contractor will make any product or service change that is required as a consequence of a change in any law, rule, or state board policy statement relating to the **System Package**, provided that Contractor is compensated equitably, based on common industry rates, as are reasonably agreed by the parties.

C. Contractor will provide assistance to the County as may be required to modify the property tax management system to comply with changes in stated law, Department rules, Department policy statements, or 50 IAC 23-19 within the time period prescribed by the law, rule or Department.

4. **Contractor to Provide Maintenance Agreement.** Contractor agrees, in compliance with 50 IAC 23-19-2(b)(1) and (4) and 50 IAC 23-19-3, that if Contractor is a vendor of assessment software and tax and billing software, Contractor will provide (i) a software maintenance Agreement that meets the standards prescribed in 50 IAC 23-19; (ii) Contractor will reimburse the County for all costs incurred as a result of the Contractor's failure to continue to support the assessment software or tax and billing software during the life of the maintenance agreement; and (iii) Contractor must offer a maintenance contract for ongoing maintenance services of the property tax management system that includes (1) telephone support, (2) problem diagnostic support for the Contractor's personnel by any necessary combination of remote and on site services, (3) system modification initiated by the Contractor, and (4) services to correct defects in software that are provided at Contractor expense.

**5. Contract Representative.** The County shall be the Contract Representative to serve as the primary contact person under the Contract.

**6. Contractor Employees – Project Manager.** The Contractor assigns Phillip Folkerts as the project manager, with whom the County and the Department shall discuss all issues related to the Contract, and the contact information for the project manager is:

Address: 9670 Coyote Court - Noblesville, IN 46060  
Work tel: 317-702-1962  
Cell tel: 317-702-1962  
Email: phill@as2solutions.com

**7. Work Plan.** Attached hereto, and incorporated fully herein as Exhibit A is the Work Plan developed and approved by the Contractor and the County setting forth the schedule for the completion of work under this Contract. The Contractor and the County warrant and represent that the Work Plan ensures that all information technology requirements necessary to fully comply with the obligations of 50 IAC 23 have been met.

**8. Performance Bond.** The Contractor shall purchase a performance bond from a surety licensed to do business in the State of Indiana. The performance bond shall be in the same amount as the price of this contract and shall entitle the County to call upon the surety to complete the contract in one of three ways: 1) the surety completes the contract by hiring a completion contractor; 2) the surety and the County choose a new contractor to complete the contract and the surety pays the costs; or 3) the County alone chooses a new contractor and the surety pays the costs. If the surety chooses to complete the contract by hiring a completion contractor, the surety assumes the same risk as the original Contractor. The performance bond shall be attached as Exhibit B and incorporated by reference to this Contract.

**9. Disaster Recovery.** Contractor shall provide a Continuity Plan. The Continuity plan shall provide, at minimum, the following:

A. provision of an alternate power source for uninterrupted services:

B. designation of one or more facilities (each a "Disaster Recovery Site") or separate computer resources to which Contractor shall move the affected portion of any Services upon the occurrence of a Force Majeure event requiring such a relocation (including a Force Majeure event at a Disaster Recovery Site), which Disaster Recovery Sites for this Agreement shall be N/A;

C. equipment of each Disaster Recovery Site with data processing resources sufficient to provide all Services in reasonable compliance with the terms and conditions of the Contract, based on the circumstances of the Force Majeure event; and

D. specification of all procedures for the determination or declaration of a Force Majeure event, which determination or declaration may not be unreasonably

withheld or delayed by either party. In the event of a Force Majeure event, Contractor shall use commercially reasonable efforts to resume delivery of the services (including via electronic access) utilizing the Disaster Recovery Site in the timeframe provided in the Continuity Plan; to the extent one or more Force Majeure events materially and adversely affects or prevents performance of the Continuity Plan, Contractor shall provide the State with a plan to resume delivery of the Services no later than seven (7) business days thereafter at all Service Locations other than those at which the Force Majeure event has rendered impractical the delivery of the Services at such Service Locations; the State shall not unreasonably deny approval of the new plan.

**10. Office Space; Computer Support.** The County shall not be responsible for providing the Contractor with office space or computer support in connection with the performance of this Contract, except as provided in the Work Plan.

**11. Continuity of System Operations.** If for any reason the County changes the assessment or tax and billing software or any other part of the computer system at (i) the end of the Contract term, (ii) Contract termination, (iii) decertification, or (iv) failure of recertification, the Contractor shall in no way impede or delay the smooth, orderly, and timely transfer of the County's data from the current database to the new database.

**12. Source Code Escrow.** Contractor agrees to maintain an Escrow Agreement for the Software source code and related documentation for the benefit of the County and the Department during the term of the Contract. Contractor further guarantees that it will place a copy of a revised or additional software source code and documentation with the Escrow Agent promptly after Contractor makes changes or additions to the Software, and will notify the County and the Department that it has done so. Contractor shall include the Department as a third party beneficiary to the Escrow Agreement at no charge to the Department. The County and the Department shall be entitled to receive a copy of the software source code in the event that Contractor has ceased all business activities for a period of ninety (90) days or more, and a third party has not agreed to assume the responsibilities of this Contract. County's or the Department's use of the Contractor's source code shall be unlimited in the event of breach and County and the Department shall retain sole ownership of the source code.

**13. Consideration.** The County shall pay the Contractor as a fee of \$8,500.00 in full payment for the complete performance of all duties, responsibilities and activities set out in this Contract and on the Work Plan mutually agreed to under paragraphs Five and Six of this Contract attached as Exhibit A. The fee shall be paid in the manner set forth below.

**14. Guaranteed Most Favorable Terms.** All of the prices, terms, warranties and benefits granted by Contractor in this Contract are comparable to or better than the terms granted by Contractor to any other similarly situated state and local government customer. If Contractor, prior to the delivery of the software, announces a price reduction or makes generally available to other customers more favorable terms or conditions with respect to the software, such prices, terms, warranties or conditions shall be made available to State on the date the price reduction or change in terms and

conditions became effective.

**15. Condition of Payment.** All products, software and services provided by the Contractor must be provided and performed to the reasonable satisfaction of the County and the Department, as determined at their sole discretion and in reliance upon all applicable federal, state, local laws, ordinances, rules and regulations. The County shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state or local statute, ordinance, rule or regulation.

**16. Time and Manner of Payment.** The Contractor shall be paid as follows:

A. At the end of each month, the Contractor shall submit a claim for payment for work completed under the Contract during that month. The amount of each monthly payment is subject to the completion percentage requirements set forth in the Work Plan, subject to approval by the County, and is subject to full compliance with all other obligations under this Contract. Approval shall be based on the monthly *[specify the time period when the reports must be submitted. For example, monthly, weekly, or biweekly]* progress reports submitted by the Contractor and on the County's inspection of the Contractor's assessment records, and the submission of the reports to the Board of County Commissioners. Payment shall be made to the Contractor within sixty days after approval by the County.

B. If all work is not completed under this Contract by the completion dates specified in the Work Plan of this Contract or if all required data is not submitted to the Department in the appropriate format in a timely manner, then all further payments may be suspended until all work has been satisfactorily completed and approved by the County and as otherwise required under this Contract. Payments of the suspended amount will be made to the Contractor within sixty days after that approval by the County, subject to other terms of this Contract.

**17. Penalties.** Pursuant to I.C. 6-1.1-4-19.5(b)(2), payments due under this Contract shall be reduced by the amount of (\$25.00) per business day that any part of the performance by the Contractor remains incomplete after the due dates specified in the Work Plan and this Contract.

**18. Certification of Computer Software and Services.**

A. A material inducement for entering into this Contract is that the Contractor's computer software and computer services have been certified under I.C. 6-1.1-31.5 and 50 IAC 23-18 in order to enter into this Contract. The Contractor represents and warrants that all required certifications are in effect at the time of entering into this Contract.

B. Contractor will take all steps necessary to maintain such certification throughout the term of this Contract. Contractor shall immediately notify the County and the Department in writing of any circumstance or occurrence jeopardizing the certification status.

C. Pursuant to 50 IAC 23-19-2, this Contract is void and the Contractor may not receive additional funds if the Contractor's certification is denied, decertified or revoked.

**19. Term of Contract.** The Contractor shall commence work under this Contract within thirty days of the date of approval by the Department of Contractor's employment pursuant to this Contract. The Contractor shall complete all work to be performed under this Contract no later than February 3, 2009.

**20. Contract Reports and Monitoring.**

A. The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. Contractor shall make such materials available at its office at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the County or the Department or its authorized designees. Copies shall be furnished at no cost to the County or the Department if requested.

B. The Contractor shall provide written progress reports to the County and Board of County Commissioners in a form reasonably prescribed by the County. The reports shall include, at minimum, summation of past activities; activities currently in development; recent accomplishments; identification of problems or issues that have or will create delays to scheduled milestone delivery; timeline revisions, if necessary; unscheduled activities and their effect on the project schedule or costs; activities scheduled for the next reporting period; and any additional reporting elements that may be added to the progress reports, as may be mutually agreed upon by the parties.

The County and Board of County Commissioners may require additional information be included in the reports. The Contractor shall submit the reports to the County, within three (3) days of receipt of a request.

C. The County and Board of County Commissioners may at all times inspect the records of the Contractor to verify the progress and evaluate the quality of work performed. The County and members of the Board of County Commissioners may accompany the Contractor's personnel in their assigned duties to assure the Contractor's adherence with contractual specifications and approved procedures. The Contractor shall extend its full cooperation to the Contract Representative by providing access to all program related records, and by making personnel available upon request for the purpose of monitoring quality, performance and progress.

D. The Contractor shall give unrestricted access to Contractor's work product to the Department and to LSA. Upon written request or authorization of the County or the Department, Contractor shall provide, and shall cause its Subcontractors to provide, the County or the Department with prompt, reasonable, and adequate access to any Records in Contractor's actual or constructive possession that are directly pertinent or reasonably related to the performance of this Contract. Contractor shall provide such access wherever Contractor, or any other person acting as agent for or on behalf

Contractor in any way, maintains such records. Contractor further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this section. Contractor will require its Subcontractors to provide comparable access and accommodations.

**21. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the County becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the County may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**22. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the County. Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**23. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the County and the Department.

**24. Confidentiality of Information**

A. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the County and the Department.

B. The parties acknowledge that the services to be performed by Contractor for the County under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the County or the State of Indiana in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the County agree to comply with the provisions of I.C. 4-1-10 and I.C. 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

C. If the County or the Department receives a public records request that relates to information or documents in the possession of the County or the Department

related to Contractor's (or any Subcontractor's) intellectual property, trade secrets, or other proprietary rights, the County or the Department shall promptly forward such request to Contractor for response. Contractor shall designate in writing which of those documents, if any, Contractor considers Confidential Information or information otherwise excepted from public disclosure requirements and state with specificity the factual or legal basis for objecting to the disclosure of such documents. Contractor agrees and acknowledges that only information falling within a specific exemption permitted under IC 5-1 4-3-4 shall be designated as Confidential. Contractor shall mark each page of a document considered to be Confidential Information as "Confidential" or a similar designation. The County or the Department shall promptly review the basis for Contractor's claim of confidentiality, and shall not disclose the documents subject to Contractor's claim if the County or the Department concurs with such claim, provided that if the County or the Department determines that its obligation under public access law requires such disclosure, the County or the Department shall promptly notify Contractor of such determination and will not make such disclosure if Contractor (or a Subcontractor) obtains, prior to the expiration of the applicable timeframe for response to such request, either an opinion from the Indiana Public Access Counselor that such disclosure is not required or a protective order or other relief from any court of competent jurisdiction in the State of Indiana preventing such disclosure.

**25. Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the County and the Department and all such materials will be the property of the County and the Department. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the County and the Department, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the County or the Department and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the County and the Department full, immediate, and unrestricted access to the work product during the term of this Contract.

**26. Information Technology Enterprise Architecture Requirements.** If the Contractor provides any information technology related products or services to the County, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the County shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The County or the Department may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.



**27. Delays.**

A. Whenever the Contractor or the County have knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, they shall within ten days provide written notice of the delay to the other party by certified mail, return receipt requested, including all relevant information with respect to the actual or potential cause of the delay.

B. In the event of a delay by the Department of Local Government Finance, legislative action or court rulings, the County reserves the right to re-negotiate all terms of the Contract including costs.

**28. Disputes**

A. Should any disputes arise with respect to this Contract, the Contractor and the County agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the County or the Contractor as a result of such failure to proceed shall be borne by the Contractor.

C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon issuance of written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification, to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party shall submit the dispute in writing according to the following procedure:

The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Department of Local Government Finance. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the County within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is requested within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate

decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

The County may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the County to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**29. Termination for Convenience By County.** This Contract may be terminated, in whole or in part, by the County or the Department whenever, for any reason, the County or the Department determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The County will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

**30. Termination for Default by County.** If the County, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

**31. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with I.C. 5-11-1, *et. seq.* and audit guidelines specified by the State.

**32. Compliance with Laws**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the County and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is/are presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana or Vermillion County. The Contractor agrees that any payments currently due to the State of Indiana or Vermillion County may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied or this Contract suspended

until the Contractor is current in its payments and has submitted proof of such payment to the State of Indiana.

C. The Contractor certifies, warrants and represents that it has no current, pending or outstanding criminal, civil or enforcement actions initiated by the State of Indiana or Vermillion County, and that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana or Vermillion County. Contractor agrees that it will immediately notify the County and the Department of any such actions and during the term of such actions, the County or the Department may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

D. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies or Vermillion County, the County may delay, withhold, or deny work to the Contractor.

E. The Contractor warrants that the Contractor shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the County. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the County.

F. The Contractor affirms that, if it is an entity described in I.C. Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

**33. Taxes.** The County is exempt from most state and local taxes and many federal taxes. The County and the Department will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**34. Independent Contractor**

A. The parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

B. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

**35. Contractor Assignment, Successors and Subcontracting.** All contract provisions shall be binding on all parties to the Contract and their successors and assigns.

The Contractor shall not assign or subcontract the whole or any part of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the Contract Representative, provided that the Contractor gives written notice (including evidence of such assignment) to the Contract Representative thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

**36. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**37. General Provisions.**

A. Entire Agreement. This Contract sets forth the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior oral and written agreements and understanding between the County and the Contractor. No representation, promise, inducement, or statement of intention has been made by either party which is not set forth in this Contract and neither party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth.

B. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the County's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the County and the Department in accordance with applicable law for all damages to the County or the Department caused by the Contractor's negligent performance of any of the services furnished under this Contract.

C. Severability. In the event that one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions contained in this Contract. If any provisions contained in this Contract shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it then shall appear.

D. Amendment. No supplement, modification or amendment of this Contract will be binding unless in writing and executed by all of the parties that are signatories to the Contract.

**38. Governing Law.** This Contract shall be subject to and interpreted in accordance with the law of the State of Indiana and suit, if any, shall be brought in Indiana courts.

**39. Notice to Parties.**

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the County shall be sent to:

Name: PATRICIA RICHEY  
Title: VERMILLION COUNTY ASSESSOR  
Organization: \_\_\_\_\_  
Address: PO BOX 268  
City/State/Zip: NEWPORT  
Tele: 765-492-4008  
Fax: \_\_\_\_\_  
Email: patrichey@vermilliongov.us

B. Notices to the Board of County Commissioners:

Name: TIM WILSON  
Name: HARRY CROSSLEY  
Name: KIM HAWKINS  
Address: PO BOX 190  
City/State/Zip: NEWPORT, IN 47966  
Tele Contract No.: 765-492-3570  
Fax Contact No.: \_\_\_\_\_  
Email Contact: \_\_\_\_\_

C. Notices to the Contractor shall be sent to:

Name: Phillip Folkerts  
Title: President, AS2  
Organization: AS2, Inc.  
Address: 9670 Coyote Court  
\_\_\_\_\_  
City/State/Zip: Noblesville, IN 46060  
Tele: 317-702-1962  
Fax: \_\_\_\_\_  
Email: phill@as2solutions.com

D. Notices to the Department shall be sent to:

General Counsel  
Department of Local Government Finance  
Indiana Government Center North  
400 North Senate Avenue, Rm. 1058B  
Indianapolis, Indiana 46204  
317-233-6770 voice  
317-232-8779 fax  
*Kushneger* @dlgf.in.gov email

**40. Maintaining a Drug-Free Workplace.** The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the County and the Department within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the County or the Department, and through it, the State, for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the

statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying the County and Department in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction.
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**41. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless County and the Department, their agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. County and the Department shall **not** provide such indemnification to the Contractor.

**42. Insurance. N/A**

A. The Contractor shall carry automobile, public liability and worker's compensation insurance in the amounts as follows:

Type	Coverage	Amount
------	----------	--------

*(List any insurance that the County requires the Contractor to carry and the amount required.)*

B. The Contractor's insurance coverage must meet the following additional requirements:

- (1) The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
- (2) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- (3) The County and the Department will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the

County and the Department under this Contract shall not be limited by the insurance required in this Contract.

(4) The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned County and Department.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the County or the Department to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the County and the Department before the commencement of this Contract.

**43. Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

**44. Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Any authorized expenditures shall be reimbursed at the current rate paid by County Policy.

**45. Copy of Contract to Department of Local Government Finance**  
The County Assessor shall provide to the Department of Local Government Finance a copy of the executed contract, including documentation of the performance bond, within forty-five (45) days of the contract's execution.

#### **NON-COLLUSION AND ACCEPTANCE**

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the

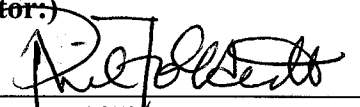


Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, the Contractor and the County have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

(Contractor:)

(where applicable)

By: 

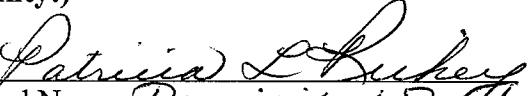
Attested By: \_\_\_\_\_

Printed Name: Phillip Folkerts

Title: President, AS2

Date: 11/02/2008

(County:)

By: 

Printed Name: PATRICIA L. RICHEY

Title: VERMILION CO. ASSESSOR

Dated: 11-5-08

Vermillion County Board of County Commissioners

By: 

Commissioner, for cc

Dated: 11-3-08

By: 

Commissioner, \_\_\_\_\_

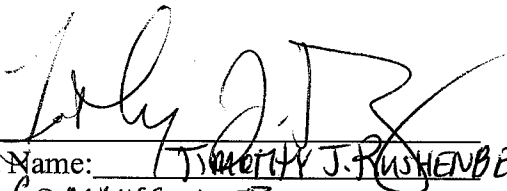
Dated: 11-3-08

By: 

Commissioner, \_\_\_\_\_

Dated: 11/3/08

**Department of Local Government Finance:  
Pursuant to I.C. 6-1.1-4-17(a) Approves the  
Employment of Contractor**

By:   
Printed Name: TIMOTHY J. RUSHENBERG  
Title: COMMISSIONER  
Date: 23 DECEMBER 2008 (Effective Date)

**Work Plan  
Exhibit "A"**

In consideration of the promises, mutual covenants and obligations of the parties, the County, the Department and the Contractor agree as follows:

**1. Products and Services Provided by Contractor.**

Contractor agrees to provide to County certain Software (collectively the "System Package"), all as more particularly described below. The System Package shall be governed by the terms of this Contract, and to the extent the terms of this Contract, the terms and provisions of this Contract shall control.

**2. Limitations of Use/Confidentiality**

The County understands and agrees that all rights, title, and interest in and to PropMan constitute confidential and proprietary information of AS2. The County further understands and agrees that PropMan shall be used solely and exclusively by the County, and the County shall not: (a) translate, decompile, reverse, engineer, disassemble, modify, reproduce, rent, lease, or lend PropMan or any part thereof; (b) permit any third party to use PropMan or permit access thereto except by its employees who need such access to carry out their duties in the ordinary and normal course of the County's business; (c) use PropMan or related documentation in the operation of a services bureau or to process data or transactions for other persons or entities; (d) allow access to PropMan through terminals other than those of the County without the express written consent of AS2. AS2 shall maintain confidentiality of all County records, data, information, and correspondence of any type. All information related to the services provided under this Agreement shall be provided to the County only unless otherwise directed by the County or directed by a court of law.

The County may not duplicate PropMan except to make one copy solely for backup purposes. The County shall not remove any copyright, trademark, proprietary legends, or legal or warning notices included on or embedded on PropMan. Further, the backup copy of PropMan shall be subject to all of the terms and conditions of this Agreement.

**3. Warranty of Ownership**

AS2 hereby represents and warrants that it is the owner of PropMan; that it possesses full proprietary intellectual property rights, including the right to grant a license; and that no other person or business entity has any right or claim to the ownership of PropMan.

**4. Warranty of Software**

PropMan is warranted, for a period of one year, to conform to the design specifications of the State of Indiana. If PropMan fails to conform to the applicable design specifications, AS2 agrees to correct any defect in a timely manner. For purposes of this provision, non-conformance to design specification and the term "defect" shall mean only significant deviations from the design specifications. In the event AS2 does not correct any such defect after it has had reasonable opportunity to do so, County shall have all remedies available to County under equity or law, and shall in addition, be entitled to recover reasonable attorney fees incurred in the enforcement of this Agreement. AS2 represents and warrants that PropMan will be suitable for the particular purposes of the County, and

that PropMan will perform the functions required by the Vermillion County Assessor for which PropMan has been purchased.

#### **5. Installation of Software / Updates**

As a part of its obligations under this Agreement, AS2 shall undertake the workflow design, setup, installation, network configuration of PropMan on the computer system of the Vermillion County Assessor's Office. AS2 shall also provide to the County all software updates for a period of One (1) year following the date of installation of PropMan on the County Assessor's computer system.

#### **6. PropMan Training / Technical Support**

AS2 shall also provide to the County training for up to five (5) users with a total time of fifteen (15) hours. For a period of One (1) year following installation, AS2 shall also provide technical support to the County Assessor's office and any maintenance that may be required, up to a total of Twenty (20) hours per year. In performing its duties under this Agreement, AS2 agrees to work closely with the Vermillion County Assessor's office to ensure that the County meets all statutory deadlines. AS2 also agrees to work in conjunction with the Vermillion County Auditor's office and other service providers, including but not limited to those associated with reassessment activities and mass appraisal providers, to integrate and transfer information so as to provide information to the County in a uniform format.

#### **7. Software Purchase Price**

AS2 hereby sells its license and first-year training and technical support services for PropMan to the County for the following sum:

A license to PropMan to be used in the County Assessor's Office (unlimited PC's within the office):

Eight Thousand Five Hundred dollars (\$8,500.00).

Each PC using the software(s) must own Microsoft Access Version 2003 or Version 2007 and is not included as part of this agreement.

#### **8. Annual Service and Maintenance Agreement**

Contractor agrees, in compliance with 50 IAC 23-19-2(b)(1) and (4) and 50 IAC 23-19-3, that if Contractor is a vendor of assessment software and tax and billing software, Contractor will provide (i) a software maintenance Agreement that meets the standards prescribed in 50 IAC 23-19; (ii) Contractor will reimburse the County for all costs incurred as a result of the Contractor's failure to continue to support the assessment software or tax and billing software during the life of the maintenance agreement; and (iii) Contractor must offer a maintenance contract for ongoing maintenance services of the property tax management system that includes (1) telephone support, (2) problem diagnostic support for the Contractor's personnel by any necessary combination of remote and on site services, (3) system modification initiated by the Contractor, and (4) services to correct defects in software that are provided at Contractor expense.

AS2 agrees that in the event the County seeks to extend the maintenance services provided under this Agreement for an additional year following installation of the software, the County may purchase such service for the sum shown below. The scope of services shall include ongoing technical support services, and free software updates, including state mandated changes to the forms.

Three Thousand Five Hundred dollars (\$3,500.00)